

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY SEOUL

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E.O. 11652: N/A

TAGS: SCUL, PINT, KS, US

SUBJ: KOREAN REQUEST FOR RETURN OF CULTURAL PROPERTY

REFS: (A) SEOUL 3915; (B) STATE 130389

1. FOLLOWING IS PROVIDED IN RESPONSE TO EMBASSY REQUEST
REF (A) FOR OUTLINE OF LEGAL ASPECTS OF CULTURAL PROPERTY
PROBLEM. WE RECOGNIZE POSSIBLE POLITICAL MOTIVATION
BEHIND INSTANT REQUEST. NEVERTHELESS, THIS INFORMATION
MAY BE USEFUL IN THIS OR OTHER INSTANCES TO THE EXTENT
THAT CONCERNS EXPRESSED BY ROKG OR PRIVATE GROUPS APPEAR
SINCERE.

2. AT PRESENT THERE EXIST NO MUNICIPAL OR INTERNATIONAL
LEGAL DEVICES SPECIFICALLY APPLICABLE TO CULTURAL PROPERTY
THAT WOULD BE AVAILABLE TO EFFECT RETURN FROM THE UNITED
STATES OF ITEMS ILLEGALLY REMOVED FROM KOREA. UNESCO
CONVENTION OF NOVEMBER 14, 1970, ON MEANS OF PROHIBITING
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AND PREVENTING ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY, WHICH USG STRONGLY SUPPORTS IS IN FORCE ONLY AMONG THOSE STATES WHICH HAVE BECOME PARTY. OUR LATEST INFORMATION IS THAT TO DATE NINETEEN STATES HAVE BECOME PARTY EITHER THROUGH RATIFICATION OR ACCEPTANCE; NEITHER U.S. NOR KOREA HAVE YET DONE SO. (SENATE HAS ADVISED AND CONSENTED TO U.S. RATIFICATION, WHICH WILL FOLLOW UPON ENACTMENT OF NECESSARY IMPLEMENTING

LEGISLATION NOW BEFORE CONGRESS.) OTHER SPECIFIC MEASURES, SUCH AS US-MEXICO TREATY OF COOPERATION OF JULY 17, 1970, AND P.L. 92-587 ON IMPORTATION OF CERTAIN PRE-COLUMBIAN MATERIALS, ARE APPLICABLE ONLY TO LIMITED CATEGORIES OF CULTURAL PROPERTY OF LATIN AMERICAN ORIGIN.

3. MORE GENERALLY APPLICABLE LEGAL MEASURES MAY, HOWEVER, BE USED IN APPROPRIATE FACTUAL SITUATIONS. FOR EXAMPLE, US STATE AND FEDERAL COURTS OF APPROPRIATE JURISDICTION ARE OPEN TO ANY FOREIGN GOVERNMENT FOR THE PURPOSE OF A CIVIL SUIT IN REPLEVIN IN ORDER TO RECOVER PROPERTY BELONGING TO IT FROM ONE NOT LEGALLY ENTITLED TO POSSESSION. (SINCE THIS REMEDY IS AVAILABLE ONLY TO ONE CLAIMING LEGAL TITLE TO GOODS IN QUESTION, ITS USEFULNESS TO ROKG WOULD HINGE ON WHETHER CULTURAL PROPERTY SOUGHT TO BE RECOVERED IS, UNDER KOREAN LAW, PROPERTY OF THE STATE. REMEDY DOES NOT REPEAT NOT LIE WHERE "ILLEGALITY" OF REMOVAL BASED NOT ON TITLE BUT ONLY ON ALLEGED VIOLATION OF KOREAN EXPORT PROHIBITIONS. WOULD APPRECIATE CLARIFICATION FROM EMBASSY ON TITLE TO CULTURAL PROPERTY AT ISSUE UNDER KOREAN LAW.)

4. FYI. IN CERTAIN CASES -- SUCH AS THOSE INVOLVING MAJOR ARTIFACTS OF SIGNIFICANT MONETARY AND ARCHEOLOGICAL VALUE -- RECOVERY HAS BEEN EFFECTED INDIRECTLY THROUGH OFFICIAL USG ACTION IN FORM OF ENFORCEMENT OF CRIMINAL OR ADMINISTRATIVE PENALTIES UNDER GENERAL STATUTES, E.G., 18 U.S.C. SECTION 2314 MAKING IT A FELONY TO KNOWINGLY TRANSPORT STOLEN PROPERTY VALUED IN EXCESS OF DOLS 5,000 IN INTERSTATE OR FOREIGN COMMERCE, OR CUSTOMS LAWS PROVIDING FOR FORFEITURE OF GOODS FOR LIMITED OFFICIAL USE

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FAILURE TO DECLARE THEM UPON ENTRY INTO U.S. WE WOULD NOT WISH TO BRING THESE REMEDIES TO ATTENTION OF ROK OR PRIVATE KOREAN GROUPS, EXCEPT IN REFERENCE TO SPECIFIC CASES IN WHICH FACTS ARE CLEARLY ESTABLISHED. END FYI.

5. EMBASSY SHOULD NOT TAKE INITIATIVE RE HENDERSON AFFAIR BUT MAY IN ITS DISCRETION DRAW UPON PARAS 2 AND 3 ABOVE

IN DISCUSSING MATTER WITH ROKG OR INTERESTED PRIVATE
GROUPS IF SUBJECT RAISED. KISSINGER

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